

AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 681

Introduced by Assembly Member Vargas

February 17, 2005

An act to amend Section 5307.1 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 681, as amended, Vargas. Workers' compensation: official medical fee schedule.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law requires the administrative director, after public hearings, to adopt and revise periodically an official medical fee schedule that shall establish reasonable maximum fees paid for medical services, drugs and pharmacy services, health care facility fees, home health care, and all other treatment, care, services, and goods, other than physician services. Existing law provides that for calendar years 2004 and 2005, the existing official medical fee schedule rates for physician services shall remain in effect, but shall be reduced by 5%, and that, commencing January 1, 2006, the administrative director shall have the authority to adopt and revise an official medical fee schedule for physician services.

This bill would instead provide that ~~for calendar years 2003 to 2010, inclusive~~, the official medical fee schedule rates for physician services in effect on December 31, ~~2003~~ 2004, shall remain in effect, ~~but that these rates shall be reduced by 5% until January 1, 2010~~. It would

also authorize the administrative director to adopt and revise an official medical fee schedule for physician services commencing January 1, ~~2011~~ 2010, rather than January 1, 2006, and would make other clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5307.1 of the Labor Code is amended to
2 read:
3 5307.1. (a) The administrative director, after public hearings,
4 shall adopt and revise periodically an official medical fee
5 schedule that shall establish reasonable maximum fees paid for
6 medical services other than physician services, drugs and
7 pharmacy services, health care facility fees, home health care,
8 and all other treatment, care, services, and goods described in
9 Section 4600 and provided pursuant to this section. Except for
10 physician services, all fees shall be in accordance with the
11 fee-related structure and rules of the relevant Medicare and
12 Medi-Cal payment systems, provided that employer liability for
13 medical treatment, including issues of reasonableness, necessity,
14 frequency, and duration, shall be determined in accordance with
15 Section 4600. Commencing January 1, 2004, and continuing until
16 the time the administrative director has adopted an official
17 medical fee schedule in accordance with the fee-related structure
18 and rules of the relevant Medicare payment systems, except for
19 the components listed in subdivision (j), maximum reasonable
20 fees shall be 120 percent of the estimated aggregate fees
21 prescribed in the relevant Medicare payment system for the same
22 class of services before application of the inflation factors
23 provided in subdivision (g), except that for pharmacy services
24 and drugs that are not otherwise covered by a Medicare fee
25 schedule payment for facility services, the maximum reasonable
26 fees shall be 100 percent of fees prescribed in the relevant
27 Medi-Cal payment system. Upon adoption by the administrative
28 director of an official medical fee schedule pursuant to this
29 section, the maximum reasonable fees paid shall not exceed 120
30 percent of estimated aggregate fees prescribed in the Medicare
31 payment system for the same class of services before application

1 of the inflation factors provided in subdivision (g). Pharmacy
2 services and drugs shall be subject to the requirements of this
3 section, whether furnished through a pharmacy or dispensed
4 directly by the practitioner pursuant to subdivision (b) of Section
5 4024 of the Business and Professions Code.

6 (b) In order to comply with the standards specified in
7 subdivision (f), the administrative director may adopt different
8 conversion factors, diagnostic related group weights, and other
9 factors affecting payment amounts from those used in the
10 Medicare payment system, provided estimated aggregate fees do
11 not exceed 120 percent of the estimated aggregate fees paid for
12 the same class of services in the relevant Medicare payment
13 system.

14 (c) Notwithstanding subdivisions (a) and (d), the maximum
15 facility fee for services performed in an ambulatory surgical
16 center, or in a hospital outpatient department, may not exceed
17 120 percent of the fee paid by Medicare for the same services
18 performed in a hospital outpatient department.

19 (d) If the administrative director determines that a medical
20 treatment, facility use, product, or service is not covered by a
21 Medicare payment system, the administrative director shall
22 establish maximum fees for that item, provided that the
23 maximum fee paid shall not exceed 120 percent of the fees paid
24 by Medicare for services that require comparable resources. If the
25 administrative director determines that a pharmacy service or
26 drug is not covered by a Medi-Cal payment system, the
27 administrative director shall establish maximum fees for that
28 item, provided, however, that the maximum fee paid shall not
29 exceed 100 percent of the fees paid by Medi-Cal for pharmacy
30 services or drugs that require comparable resources.

31 (e) Prior to the adoption by the administrative director of a
32 medical fee schedule pursuant to this section, for any treatment,
33 facility use, product, or service not covered by a Medicare
34 payment system, including acupuncture services, or, with regard
35 to pharmacy services and drugs, for a pharmacy service or drug
36 that is not covered by a Medi-Cal payment system, the maximum
37 reasonable fee paid shall not exceed the fee specified in the
38 official medical fee schedule in effect on December 31, 2003.

(f) Within the limits provided by this section, the rates or fees established shall be adequate to ensure a reasonable standard of services and care for injured employees.

(g) (1) (A) Notwithstanding any other provision of law, the official medical fee schedule shall be adjusted to conform to any relevant changes in the Medicare and Medi-Cal payment systems no later than 60 days after the effective date of those changes, provided that both of the following conditions are met:

(i) The annual inflation adjustment for facility fees for inpatient hospital services provided by acute care hospitals and for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for the 12 months beginning October 1 of the preceding calendar year.

(ii) The annual update in the operating standardized amount and capital standard rate for inpatient hospital services provided by hospitals excluded from the Medicare prospective payment system for acute care hospitals and the conversion factor for hospital outpatient services shall be determined solely by the estimated increase in the hospital market basket for excluded hospitals for the 12 months beginning October 1 of the preceding calendar year.

(B) The update factors contained in clauses (i) and (ii) of subparagraph (A) shall be applied beginning with the first update in the Medicare fee schedule payment amounts after December 31, 2003.

(2) The administrative director shall determine the effective date of the changes, and shall issue an order, exempt from Sections 5307.3 and 5307.4 and the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section ~~11370~~ 11340) of Part 1 of Division 3 of Title 2 of the Government Code), informing the public of the changes and their effective date. All orders issued pursuant to this paragraph shall be published on the Internet Web site of the Division of Workers' Compensation.

(3) For the purposes of this subdivision, the following definitions apply:

(A) "Hospital market basket" means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital

1 services provided by acute care hospitals that are included in the
2 Medicare prospective payment system.

3 (B) "Hospital market basket for excluded hospitals" means the
4 input price index used by the federal Centers for Medicare and
5 Medicaid Services to measure changes in the costs of providing
6 inpatient services by hospitals that are excluded from the
7 Medicare prospective payment system.

8 (h) Nothing in this section shall prohibit an employer or
9 insurer from contracting with a medical provider for
10 reimbursement rates different from those prescribed in the
11 official medical fee schedule.

12 (i) Except as provided in Section 4626, the official medical fee
13 schedule shall not apply to medical-legal expenses, as that term
14 is defined by Section 4620.

15 (j) The following Medicare payment system components may
16 not become part of the official medical fee schedule until January
17 1, 2005:

18 (1) Inpatient skilled nursing facility care.

19 (2) Home health agency services.

20 (3) Inpatient services furnished by hospitals that are exempt
21 from the prospective payment system for general acute care
22 hospitals.

23 (4) Outpatient renal dialysis services.

24 (k) Notwithstanding subdivision (a), ~~for the calendar years~~
25 ~~2004 to 2010, inclusive, the official medical fee schedule rates~~
26 ~~for physician services in effect on December 31, 2003, shall~~
27 ~~remain in effect, but these rates shall be reduced by 5 percent. the~~
28 *official medical fee schedule rates for physician services in effect*
29 *on December 31, 2004, shall remain in effect until January 1,*
30 *2010.* However, no fee for any procedure shall be reduced below
31 the Medicare rate for the same procedure.

32 (l) Notwithstanding subdivision (a), the administrative
33 director, commencing January 1, ~~2011~~ 2010, shall have the
34 authority, after public hearings, to adopt and revise, no less
35 frequently than biennially, an official medical fee schedule for
36 physician services. If the administrative director fails to adopt an
37 official medical fee schedule for physician services by January 1,
38 2011, the existing official medical fee schedule rates for

- 1 physician services shall remain in effect until a new schedule is
- 2 adopted or the existing schedule is revised.

O